BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

EDWARD L. PARKER	}
Claimant VS.	Daakat Na. 400 CO7
SERVICEMASTER ADVANCE, INC.) Docket No. 198,697
AND	}
AMERICAN FAMILY MUTUAL INSURANCE COMPANY Insurance Carrier	

ORDER

Claimant appeals from an April 28, 1995 Preliminary Hearing Order of Administrative Law Judge John D. Clark which denied claimant's request for preliminary benefits.

Issues

The sole issue before the Appeals Board is whether claimant has met his burden of proving that he sustained personal injury by accident arising out of and in the course of his employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and considering the arguments of the parties, the Appeals Board finds, for preliminary hearing purposes, as follows:

The finding by the Administrative Law Judge that claimant has not met his burden of proving that he sustained personal injury by accident arising out of and in the course his employment with the respondent should be affirmed. This issue turns primarily on the credibility and believability of the witnesses. The Administrative Law Judge had an opportunity to observe the in-person testimony of the claimant and of Rick Doughty, co-owner of the respondent company. The Administrative Law Judge determined the testimony of Rick Doughty to be more credible and believable than that given by claimant on the issue of whether claimant sustained injury in the manner described. Under such circumstances, the Appeals Board generally gives some deference to the findings of fact by the Administrative Law Judge where the testimony is conflicting.

Claimant testified that Rick Doughty witnessed his accident. Claimant states he experienced a sharp pain in his back. "It locked, and I was bent over at a degree angle." Claimant went on to testify that he was unable to continue working that day and thereafter was off work about seven (7) days following his injury. Although Rick Doughty testified that

he recalls assisting claimant with unloading an industrial clothes dryer from a trailer along with several other workers, but he states that claimant did not mention being injured, did not walk around with his back bent at an angle and did not miss any work. This latter assertion is supported by the timecard records introduced at that hearing.

Claimant offered into evidence a letter from a Mr. Patrick Herod which collaborates his testimony. Nevertheless, giving due deference to the findings of the Administrative Law Judge who had the opportunity to observe the demeanor and assess the credibility of the witnesses testifying at the preliminary hearing, and considering the record as a whole, the Appeals Board finds that the claimant has not met his burden of proving that he sustained personal injury by accident arising out of and in the course of his employment with respondent on the date alleged.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the April 28, 1995 Order of Administrative Law Judge John D. Clark should be, and the same is hereby, affirmed.

IT IS SO ORDERED.		
Dated this day of Se	ptember 1995.	
	BOARD MEMBER	
	BOARD MEMBER	
	BOARD MEMBER	

c: Edward L. Parker, Lawton, OK William L. Townsley III, Wichita, KS John D. Clark, Administrative Law Judge Philip S. Harness, Director